IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.60/2005

Shri Ramesh Shripad Naik. ..... Appellant.

V/s.

Smt. Taramati Shripad alias Audu Shripad Naik. ..... Respondent.

Mr. S. R. Rivonkar, Advocate for the appellant.

Mr. A. Naik, Advocate for the respondent.

CORAM : P.V. KAKADE, J.

DATE : 23RD AUGUST, 2006.

ORAL ORDER :

Heard learned Counsel for both the parties. Perused the record. The appellant has preferred this appeal against the Judgment and Order dated 15th December, 2004 passed by the IInd Additional District Judge, Panaji dismissing the appeal and confirming the Judgment and Order dated 17.8.2002 passed by the trial Court in Regular Civil Suit No. 45/1994/C.

2. The plaintiff came with a case that the respondent is the mother and their house is in the property surveyed under No.170/8. The said

residential house comprised of 12 rooms, a balcony, a hall and a courtyard in the middle. It has only one entrance through the balcony in the front and they occupy portion of the house consisting of four rooms lying towards the left hand side if one faces the house. The entry to his portion is through the front door and, thereafter has to turn to the left from the hall. On 2.2.1994 when his friends had come to his house and were in the portion occupied by him, the respondent closed the suit door and caused inconvenience to the plaintiff. Hence, the suit for injunction came to be filed. The defendant challenged the suit denying the allegations made by the plaintiff and sought its dismissal.

The trial Court, on the basis of the available evidence, was of the view that the plaintiff was not entitled to any perpetual injunction as he was not in a position to prove the allegations. It was further held that the defendant had proved that the plaintiff was entering his portion of four room from western side door of the suit house and entry through front door was restrained and, as such, the suit came to be dismissed. The appeal was preferred against the said order. The learned lower appellate Court Judge, after hearing both the parties, concurred with the findings recorded by the trial Court and dismissed the appeal.

3. At the outset, it may be noted that there is no substantial question of law

involved in this matter. It was urged on behalf of the appellant that the lower appellate Court has wrongly appreciated the evidence holding that there was no cause of action to file the suit. On perusal of the entire Judgment of the lower appellate Court, it appears that the reasoning adopted and the finding recorded by the lower appellate Court on the basis of the evidence cannot be faulted.

Moreover, the law on this point is quite clear. The concurrent findings of fact, however erroneous, cannot be disturbed under Section 100 of the Code of Civil Procedure. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court which is especially applicable to the present case.

4. In view of the fact that appreciation of the factual aspect of the evidence by both the Courts below is just and reasonable, therefore, no interference is called for. The appeal stands dismissed with no order as to costs.

P.V. KAKADE, J.

ssm.